Central Law Journal.

ST. LOUIS, MO., NOVEMBER 7, 1919.

THE "SOVIET" PRINCIPLE IN GOVERNMENT.

From Russia has been imported the word "soviet," which has an historical meaning quite apart from its popular meaning in America. The soviet is as important to Russia as the old "town meeting" in New England. It is one of the most ancient forms of social organization in Russia, and much of the success of the Bolsheviki is due to their adoption and adaptation of this term to their present political purposes.

But the term "soviet" is used in common parlance, not in an historical sense, but with a practical signification to describe the character of Bolshevist control of industry in Russia today. Under the "soviet" plan the workers control the industry in which they work, and for that purpose meet together and decide all questions by viva voce vote. Committees are appointed to handle various departments, who, however, must report to the central body. The so-called "Plumb" plan for the quasi-political and industrial control of railroads practically embodies the soviet principle.

The soviet idea is fascinating to "parlor sociologists," and we understand that this class of dilettantists are having a delightful time discussing and enlarging upon this principle. It has caught the imagination of some workers who believe that the soviet principle will avoid strikes and other interference with business; for, they argue, if the workers themselves fix the wages and hours of labor, there could be no ground for complaint. We understand that in a large eastern manufacturing plant this argument was actually presented to the management by a committee of the workers.

As we said in our editorial last week, the only way to meet error is with the truth. The American people are intelligent and will not accept a proposition that would destroy the wonderful commercial supremacy now enjoyed by this country if no real good could come out of it to the great majority of the people. The people will not stand for the proposition that a certain plan should be adopted simply because it is claimed that it would assist one class of workers, if, at the same time, they are convinced that the plan would injuriously affect the interest of the large majority of the people.

The Plumb plan of railroad control by workers and government agents is really the first serious attempt at industrial control of industry. It is interesting to note that the suggestion does not involve the confiscation of the roads, as in Russia, but their purchase by the government by the issuance of 4 per cent bonds. The control of the business would be in the workers. The bold proposition is that the people should buy the railroads and turn them over to a small group of men to run for their own benefit. Even the workers in other industries ought to be able to see the ridiculous effrontery of such a proposition. The load of taxation that would thus rest upon all the people for the benefit of the railroad workers would be intolerable, and if this scheme were followed in other lines of industry, the business of the country would be bearing a load of taxation that would make high wages impossible, or, which is the same thing, make the cost of living almost prohibitive. At the same time a new class of untaxed bondholders would be created—a veritable aristocracy of wealth, whose income would be the result of the workers' toil—and guaranteed by the government.

The "soviet" principle totally ignores the personal equation in business. All workers are not equally intelligent or equally honest or equally industrious, yet under the soviet scheme are each to receive the same

compensation. But the dead level of mediocrity is not the most serious danger. That element in the scheme that is defeating it in Russia and has already defeated it in Hungary is its disorganizing factor. The workers, being their own bosses, work or not as they see fit or as many hours as they wish. There is no head, no system, no responsibility. It is reported that one factory in Russia which made wagon tires before Bolshevist control at a cost of $7.00 each, were making them at a cost of $35.00 each. It was explained that this increased cost was not all due to increased wages but to incompetent management. It is easy to see that only a government monopoly would protect that business from the competition of other firms in the same business in adjoining countries.

It is not our purpose here to enter into a discussion of some of the principles of political economy the operation of which it might be interesting to investigate in this connection except to say that a statute cannot repeal the facts and principles of science. It cannot change the rule of cause and effect, supply and demand, etc. It is therefore the duty of lawyers to impress upon the people that the law cannot do the impossible. It can only operate in conformity with principles governing human conduct and cannot change these principles. It cannot arbitrarily make the poor man rich without robbing some other man to do it. It cannot continue to raise wages without increasing costs of manufacture and making the articles which each worker buys of the other cost that much more. It cannot reduce the hours of labor beyond what is reasonable without decreasing production and making it impossible for the poor man to obtain that which he needs. It cannot destroy the incentive to work and expect a body of men to think and work where all the rewards of initiative are to go to others. Law must correspond with fact; if not the law will fail and all of society will suffer from the foolish experiment.

NOTES OF IMPORTANT DECISIONS.

IS A CONTRACTOR LIABLE TO THIRD PERSON FOR DEFECTIVE CONDITION OF REPAIRS MADE UPON STRUCTURE?—It is sometimes sought to hold a contractor rather than the owner of the building for an injury caused by defective repairs made upon a building by the contractor. Thus, if A owns a building and employs B to put a new cornice on it and B adjusts the cornice very negligently so that it falls and injures a pedestrian, is B liable as well as A for the injury?

This was the question discussed by the Supreme Court of Connecticut in the case of Howard v. Redden, 107 Atl. 509. The suit was brought against Redden and Gilbey, the contractor, who built a wooden cornice weighing about 800 pounds for Mr. Redden, and being negligently and insecurely fastened and subsequently rotting away in parts it fell and injured plaintiff. The court, in sustaining the demurrer on the part of Mr. Gilbey, said:

" A contractor or workman is surely not the insurer of the everlastingness of the materials of a cornice built by him. The owner or occupier, as the case may be, is under obligation to give such inspection and make such repairs as will at least preserve the structure from the dangerous effects of natural causes, wind, rain, dampness, which no foresight of construction can guard against."

The case of Curtin v. Somerset, 140 Pa. 70, 21 Atl. 244, goes even further, and holds that a contractor is not liable even where he is negligent, because "there is no causal connection between the negligence and the hurt, such causal connection being interrupted by the interposition between the negligence and the hurt of any independent human agency." In that case the plaintiff sought to recover from a contractor who had built a porch for a hotel company. In the similar case of Casey v. Wrought Iron Bridge Co., 114 Mo. App. 47, 89 S. W. 330, the court said that "ordinarily in such cases there is found a break in the causal connection between the contractor's negligence and the injury. It is the intervening negligence of the proprietor that is the proximate cause and not the original negligence of the contractor. By occupying and resuming possession of the work the owner deprives the contractor of all opportunity to rectify his wrong. Before accepting the work as being in full compliance with the terms of the contract, he is presumed to have made a reasonably careful inspection thereof and to know of its defects; and if he takes it in the defective condition, he accepts

the defects and the negligence that caused them as his own, and thereafter stands forth as their author. When he accepts work that is in a dangerous condition, the immediate duty devolves upon him to make it safe; and if he fails to perform this duty, and a third person is injured, it is his negligence that is the proximate cause of the injury. His liability may be incurred either from his substitution for the contractor or from his neglect to repair."

RIGHT OF CESTUI QUE TRUST TO WAIVE THE RIGHT TO A SPECIAL LIEN UPON TRUST FUNDS.—In a very recent case, not yet reported, Adams Express Co. v. Oglesby, the Court of Appeals of Illinois deals with a question which has not often arisen. Under the law of Illinois it is specially provided that where deceased has received money in trust for any purpose his executor or administrator shall pay out of the estate the amount thus received and not accounted for. Such claims are defined as being claims of the sixth class, the claims of general creditors being in the seventh class.

In this particular case the deceased, who was a druggist, had received sums aggregating $2,510.59, which he had received in return for express money orders drawn upon plaintiff. He had been given the right to issue these orders and was required to account for moneys received therefor about once a month.

If this claim were put forth in the sixth class there would not be money sufficient to pay the general creditors. If it were put into the seventh class it would share pro rata with other creditors, and the estate being insolvent the plaintiff would not recover the amount of its indebtedness in full. There was no doubt in the mind of the court that the claim should be put in the sixth class unless the plaintiff had waived its rights as cestui que trust to the commingling of the special fund with the funds of the deceased and had thereby lost its right to the special lien created by this statute.

It appeared that the agent of the plaintiff knew that the deceased was keeping moneys received for money orders in his own cash drawer and was depositing such proceeds with the cash received from other transactions in one account. It was customary for the express agent to receive from the deceased his personal check for the amount due at every regular period of accounting. It is therefore contended that deceased was nothing more than an agent for the express company and not a trustee for the funds he received. The court held, however, that the company was not responsible for the knowledge of its agent of the commingling of the funds, saying that "We do not believe that the fact that remittances were made by the deceased by giving his personal check put the express company on notice that its funds were being commingled with the funds of the deceased, for it might well be that the deceased kept the funds in a separate account in the bank for his own convenience.

Formerly the right of the cestui que trust to follow the trust fund ceased when it had become confused with other property so that it was not distinguishable. Later, however, the rule was adopted that the cestui que trust's rights were not altogether destroyed by this inability to follow the fund, but that he had a right to charge the entire mass with a lien in his favor, which gave him prior rights over other creditors. There has been, however, a general departure by the courts from this rule and many exceptions have been made to it. Thus, if the trustee becomes bankrupt ought the cestui que trust to have a lien on the general estate of the trustee to the exclusion of the general creditors, or should he be paid on the same footing as other creditors? The argument in favor of giving the cestui que trust the right to the trustee's estate is based on the fact that the trust property has entered into the general estate of the trusee and thereby benefited that estate to that extent. On the contrary, however, it is argued that the trust property may have been squandered or lost and destroyed and therefore not benefited the trustee's estate, and it would be depriving the general creditors of their rights to give the cestui que trust priority in the funds of the trustee's estate. In the case of Spokane County v. Spokane First National Bank, 68 Fed. Rep. 979, the court said:

"We are unable to assent to the proposition that, because a trust fund has been used by the insolvent in the course of his business, the general creditors of the estate are by that amount benefited, and that, therefore, equitable consideration requires that the owner of the trust fund be paid out of the estate, to their postponement or exclusion. If the trust fund has been dissipated in the transaction of the business before insolvency, it will be impossible to demonstrate that the estate has been thereby increased, or better prepared to meet the demands of the creditors; and, even if it is proved that the trust fund has been but recently disbursed, and has been used to pay debts that otherwise would be claims against the estate, there would be manifest inequity in requiring that the money so paid out should be refunded out of the assets, for in so doing the general creditors, whose demands remain unpaid, are in effect contributing to the payment of the creditors whose demands have been extinguished by the trust funds."

The rule today, therefore, seems to be that the cestui que trust must not only show that trust funds have been commingled by the trustee with his own funds, but he must go further and show that the trust property has not been dissipated but is a part of the general estate of the trustee. Byrne v. Byrne, 113 Cal. 294; Colins v. Steuart, 58 N. J. Eq. 392; Nonotuck Silk Co. v. Flanders, 87 Wis. 237; Shields v. Thomas, 71 Miss. 260; Travelers' Ins. Co. v. Caldwell, 59 Kan. 156.

The rule giving a lien to the cestui que trust on the estate of a trustee where trust funds have been commingled with the trustee's personal property, whether reserved under equitable principles or by statute is not favored in law and should be strictly construed. There is no doubt that the cestui que trust can waive his lien, and where he knowingly permits the trustee to commingle the trust funds with his personal funds he should be presumed to waive his lien and should not be permitted to take advantage of the rule which permits him to subject trust property to his obligation as against general creditors.

MUST THE RATIFICATION OF A CONSTITUTIONAL AMENDMENT BE ITSELF RATIFIED BY THE PEOPLE UNDER THE REFERENDUM?—Since the adoption of the Eighteenth Amendment the question has been frequently raised whether the ratification of it by states which have adopted the initiative and referendum is sufficient until the people also have ratified it. The question recently came before the Supreme Court of Maine in the case of In Re Opinion of the Justices, 107 Atl. Rep. 673. The proposition was submitted to the court by the governor of Maine, who desired to know whether the ratification of the Eighteenth Amendment to the Constitution must be submitted to the people by referendum under the Maine constitution. The court in its answer said:

"This question we answer in the negative. In our opinion this resolve does not come within the provisions of the initiative and referendum amendment, and cannot be referred to the people for adoption or rejection by them. The ratification of the proposed amendment to the Constitution of the United States was complete, final, and conclusive, so far as the State of Maine was concerned, when the Legislature passed this resolve."

The court based its decision mainly on the fact that in the Federal Constitution, the people have already divested themselves of the power to pass upon amendments to the Constitution submitted by Congress, by expressly conferring that power upon the legislatures of the separate states. The court said:

"Whether an amendment is proposed by joint resolution or by a national constitutional convention, it must be ratified in one of two ways:

"First, by the Legislatures of three-fourths of the several states; or,

"Second, by constitutional conventions held in three-fourths thereof, and Congress is given the power to prescribe which mode of ratification shall be followed.

"Here, the state legislature in ratifying the amendment, as Congress in proposing it, is not, strictly speaking, acting in the discharge of legislative duties and functions as a law-making body, but is acting in behalf of and as representative of the people as a ratifying body, under the power expressly conferred upon it by Article 5. The people, through their Constitution, might have clothed the Senate alone, or the House alone, or the Governor's Council, or the Governor, with the power of ratification, or might have reserved that power to themselves to be exercised by popular vote. But they did not. They retained no power of ratification in themselves, but conferred it completely upon the two houses of the Legislature; that is, the Legislative Assembly.

"It is a familiar, but none the less fundamental, principle of constitutional law that the Constitution of the United States is a compact made by the people of the United States to govern themselves as to general objects in a certain manner, and this organic law was ordained and established, not by the states in their sovereign capacity, but by the people of the United States. The preamble, 'We, the people,' so states, and such is the fact. Chisholm v. Georgia, 2 Dall. 419, 1 L. Ed. 440. It is equally well settled that it was competent for the people to invest the federal government, through the Constitution, with all the powers which they might deem necessary or proper, and to make those powers, so far as conferred, supreme, to prohibit the states from exercising any powers incompatible with the objects of the general compact, and to reserve in themselves those sovereign authorities which they did not choose to delegate either to federal or state government. Martin v. Hunter's Lessee, 1 Wheat. 304, 4 L. Ed. 97. Whether a certain power has been conferred either expressly or by reasonable implication upon the national government, or has been reserved to the states or to the people themselves, must depend upon the construction of the language of the Constitution governing that particular subject-matter.

"It admits of no doubt that in the matter 5, the people divested themselves of all authority and conferred the power of proposal upon Congress or upon a national constitutional convention, and the power of ratification upon the state Legislature or upon state constitutional conventions."

THE STATUTORY REGULATION OF WAGES.

One of the most striking results of war conditions in Great Britain is the revival of the long discredited, oft derided, and almost wholly forgotten principle of medieval common law, the once famous doctrine of the *justum pretium*. Never very clearly formulated for a reason which will be explained in a moment, this principle governed all contracts for the sale of goods and the payment of wages in pre-Reformation days. Indeed, the very phrases "contract of sale" and "contract of service" are something of an anachronism. A sale of chattels was regarded as analogous to a conversion of the seller's chattel by the purchaser, who must compensate him by paying the value of the article. The value was not a matter of bargaining between individual sellers and buyers at all. It was fixed by the steward of the Manor or the freeholders in the Court Leet or Court Baron or Court of Pie Poudre, as the case might be. In the towns it was fixed by the "Assayors" or Overseers elected by each trade-guild, and was enforced in the courts of the borough.

A similar rule applied to the contract of service. In the rural districts this was unknown; serfdom and vassalage, or the acceptance of a copyhold tenancy on condition of performing the customary manorial obligations, were the only means of selling one's services to another. Such relations created a lifelong status, not what we call a contract. In the towns, however, a journeyman might sell the product of his labor to his master, and in time there grew up a contractual relationship—nominally sale of labor—but in substance a contract of service. But the origin of the contract in the sale of a product is shown by the fact that the old action for "work and labor done," like that for "goods bargained and sold," was an action in "debt," in fact one of the eight *indebitatus* common counts. In other words, it was an action for the recovery of a chattel or sum of money taken from the plaintiff, for that is the origin of the action in debt. By a legal fiction the purchaser or hirer was regarded as having converted to his own use the property of the seller or laborer, who now sued for its recovery. It was only at a much later date that the doctrine of *assumpsit* governed a contract of service.

Now, when the old Manorial and Guild Organizations disappeared as real legal forces in the days of the Black Death and the Tudor Revolution, it was necessary to replace both. The Commission of Justices of the Peace was the new body which took over these old duties. But it took them over in a new form. The common law rules and customs were unknown to the new tribunals as such. And so legislation was necessary to give them authority to restore the *justum pretium* in each sphere of industry. This is the historical foundation on which rested the famous Elizabethan legislation affecting the wages of labor and the apprenticing of vagrants.

The leading statute, 5 Eliz. c. 4, begins with a recital that the existing law relating to wages could not "conveniently be put in due execution without the greatest grief and burden of the poor laborer and hired man." Justices were therefore authorized to fix a rate of wages which would "yield unto the hired person, both in time of scarcity and in the time of plenty, a convenient proportion of wages." Such rates were fixed at the Easter Session in each year. The rate was a standard rate, at once a minimum and a maximum, binding severe penalties on both masters and men. Justices were to certify them to the Chancery, which was then to publish them—by a Proclamation of the Privy Council—in the petty sessional district to which they related. If in any year no new rates were fixed, the old rates were to continue in force.

A curious difficulty, however, soon arose in the interpretation of this law. It proved very unacceptable in the woollen industry, now rising into importance. An ingenious

attempt was therefore made to contend that it applied only to laborers in husbandry—then the most numerous class of workers—whose hirings were usually for one year, and not to persons engaged in "domestic" industry. By "domestic" industry was meant the ordinary manufactures, in those days carried on in his own home by the worker, who received his materials from the merchant-employer, took them home, and worked them up. A new statute was necessary to make the law clear. It came in 1597. The 39 Eliz. c. 12, expressly declares that justices must fix the rates of wages "of any laborers, weavers, spinsters, and workmen or workwomen whatsoever, either working by day, week, month, or year, or taking any work at any person's hand whatsoever to be done." This comprehensive clause hit all trades, and applied to piece-work as well as to time-work. Difficulties still arose. But in 1603 the statute 1 Jac. c. 6 confirmed the old statutes, imposed penalties for fraud, and enacted that no justice who himself was a master should take part in assessing the wage rates of his own industry, an obviously equitable provision.

Gradually, however, a new limitation grew up. It became generally held that these three statutes only applied to industries which existed in 1563, and not to new industries coming into existence later. Thus the cotton, linen and iron trades—which were born at a later date—escaped the jurisdiction of justices, and from their very commencement had the benefit of "free contract." Gradually the system introduced in their case proved so beneficial that the old statutes were repealed. But this did not happen until 1813! Indeed, in 1786 an act extending the old law to woollen weavers was actually passed, but repealed next year. In 1773 the Spitalfield Acts enacted a minimum wage for the benefit of the silk weavers, but this was repealed in 1824. From that date to 1909 free contract prevailed.

As is remarked, however, by a writer in the Solicitors' Journal to whom we are indebted for the foregoing account of these old statutes, legislation, however, is apt to move in cycles. The wheel of State-Prices come round again in 1909. The Trade Board Act of that year set up boards of employers and workmen in equal numbers, with the addition of from three to five Government officials, to fix minimum wages in all "sweated" industries. In 1912 the same principle was extended to coal mines, except that one independent chairman took the place of impartial umpire between the parties equally represented on the boards. In 1915 the Munitions of War Acts set up tribunals to assess wages in all occupations which were directly or indirectly concerned in the manufacture of equipment of war. In 1918 a short act passed in November extended this regulation for six months, and it has been extended for another six months by another temporary act. How much farther the principle will go no man can say.

DONALD MACKAY.

Glasgow, Scotland.

CRIMINAL SYNDICALISM — BACK-FIRING AGAINST INDUSTRIAL UNREST BY THE LEGISLATURE OF CALIFORNIA.

At the last session of the California legislature an act was passed providing for the punishment of what is therein termed "criminal syndicalism." The act defines the meaning of these words in section 1 as follows:

"The term 'criminal syndicalism' as used in this act is hereby defined as any doctrine or precept advocating, teaching, or aiding and abetting the commission of crime, sabotage (which word is hereby defined as meaning wilfull and malicious physical damage or injury to physical property), or unlawful acts of force and violence of unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change."

This legislation is directed against the increasing menace of the teachings of the Industrial Workers of the World, and of the Bolsheviki, whose doctrines seem to find much more of a welcome in Western Coast country than any other part of the United States. But why the legislature of California should deem it necessary in dealing with such conditions to introduce into our criminal jurisprudence a new name for an old offense, amply provided for by existing law, seems hard to understand in a body where lawyers are in a majority. Then again our lawmakers seem obsessed with the idea that what industrial unrest needs most is legislation having for its object punishment for anticipated offenses against law and order. Corrective measures are given little consideration, unless they offer some immediate political advantage to the party in control.

The use of the term "syndicalism" in our legislation is borrowed from the French. Some years ago in France a movement was started with the object of bringing workers in all trades under one federation for the purpose of enforcing the demands of labor by means of strikes and kindred methods. This movement has gained widespread influence in France, and is most likely the origin of the society known as the Industrial Workers of the World, which has gained a strong footing in the western part of America. The French have termed this movement "syndicalism." The term comes from the word "syndic," also of French origin, which Bouvier says applies to one having charge of the conduct of others. In its modern sense, when applied to industrial conditions, it may mean leaders of organized labor. The word syndicalism is such a stranger to American language that it may not be found except in the latest editions of dictionaries. The writer found it in a late edition of the Standard. It is not to be found in law books or law dictionaries.

"Sabotage," the other term with which we have some acquaintance already, is likewise borrowed from the French. As now used it is the act of dissatisfied workmen, or others, left in charge of property, in damaging or wrecking the same. It will be remembered this term was applied to the acts of damage done by Germans left in charge of ships and other property, prizes of war, during the late war.

Section 2 of the act reads as follows:

1. Any person who by spoken or written words or personal conduct advocates, teaches or aids and abets criminal syndicalism or the duty, necessity or propriety of committing crime, sabotage, violence or any unlawful method of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change; or

2. Any person who wilfully and deliberately by spoken or written words justifies or attempts to justify criminal syndicalism or the commission or attempt to commit crime, sabotage, violence or unlawful methods of terrorism with intent to approve, advocate or further the doctrine of criminal syndicalism; or

3. Any person who prints, publishes, edits, issues or circulates or publicly displays any book, paper, pamphlet, document, poster or written or printed matter in any other form, containing or carrying written or printed advocacy, teaching, or aid and abetment of, or advising criminal syndicalism; or

4. Any person who organizes or assists in organizing, or is or knowingly becomes a member of, any organization, society, group or assemblage of persons organized or assembled to advocate, teach, or aid and abet criminal syndicalism; or

5. Any person who wilfully, by personal act or conduct, practices or commits any act advised, advocated, taught or aided and abetted by the doctrine or precept of criminal syndicalism with intent to accomplish a change in industrial ownership or control, or effecting any political change;

Is guilty of a felony and punishable by imprisonment in the state prison not less than one year nor more than fourteen years.

Section 3. If for any reason any section, clause or provision of this act shall

by any court be held unconstitutional then the legislature hereby declares that irrespective of the unconstitutionality so determined of such section, clause or provision, it would have enacted and made the law of this state all other sections, clauses and provisions of this act.

Section 4. Inasmuch as this act concerns and is necessary to the immediate preservation of the public peace and safety, for the reason that at the present time large numbers of persons are going from place to place in this state advocating, teaching and practicing criminal syndicalism, this act shall take effect upon approval by the governor."

The above act is not "fool" legislation this time; it should be classed as "vicious" legislation. If it had any foundation to rest upon it is the panicky feeling induced by a mistaken understanding of the industrial movement as it gathers about it the objectionable elements, such as we are pleased to call "bolshevik," and the like. War-time experiences have demonstrated how easy it is to start a panic even among our legislators. The wording of the act leaves the meaning vague and uncertain. At the same time the California legislature expressly intimates that the law may be unconstitutional. In section 3 it is provided that in case any court shall find any section, clause or provision repugnant to the Constitution, it is the intent of the legislature that the "remains" may be respected as the law of California. As the act specifically defines the offense, as "advocating and teaching," by different means, "criminal syndicalism," it is difficult to see how any part of the act is to survive the finding of unconstitutionality of any part. That the act is unconstitutional, there is little room for doubt.

The practice of syndicalism is not a crime. It is simply industrial organization. Saddling the term with "advocacy and teaching" of any doctrine aiding and abetting crime, and "criminal syndicalism is the result." This is coupled in the California act with sabotage, which is defined to be "wilfull and malicious physical damage or injury to physical property." Other elements of the offense, or felony, are "unlawful acts of force and violence, or unlawful methods of terrorism." These are the "means" which if employed in "accomplishing a change in industrial ownership or control, or effecting any political change," the act designates as constituting "criminal syndicalism."

Under this broad and significant definition it is sought in section 2 to prevent advocacy, teaching, or aiding and abetting, by word of mouth, conduct, printing, publishing and circulating, any matter or means that contributes to the commission of the crime. Under this section there is direct attack upon freedom of speech, and of the press; rights of the people regarded of such high importance in this country that the Constitution could not have been ratified by the states without the assurance of Congress that such rights would be preserved in an amendment to the original; and these rights were made a part of the very first article of the amendments. The XIV amendment provides that states shall not make laws abridging these rights guaranteed to citizens of the United States.

If such law is held good it will serve no good purpose. The laws were ample to reach any industrial conditions needing correction before this act was passed. There were no such conditions existing anywhere within the state during the session of the legislature that called for any such measure; no disturbances that the petty police courts and officials could not handle. The late strike of employes of the city and interurban car lines of Los Angeles, and the sympathetic action of regional railway employes occurred subsequent to the passing of this act. There was no element of "criminal syndicalism" in this strike, yet the corporations published broadcast the act as a warning to their employes.

I am no apologist for crime either in the garb of labor, or that of capital. Let us have laws made to fit the needs of all

classes of citizens, equitable and just in their operation; then let us have those laws enforced without fear or favor. The thought occurs to me at this time that we have plenty of law as it is. What we need most is more sense and justice in applying the laws we have now. Indeed, I think, if I were giving advice upon the subject, I would say that legislatures would do well to take a vacation so far as criminal legislation is concerned, and especially that which concerns industrial conditions.

The American people are credited with being by nature clever in politics. James Bryce, in his American Commonwealth, tells us that the American people are fond of the idea that their government is the best possible, and they render a blind obedience to its merits and defects alike; that notwithstanding their greater interest in the politics of their country, and their intelligence, they were easily led, and accept the dictate of government with less of question than the English people. We have corroboration of this estimate in the manner in which recent war measures have been accepted by our people.

With all the intelligence exhibited by the American people, their natural disposition for government and their love of politics, it is amazing to European statesmen and publicists that the United States has not kept pace with European governments in dealing with industrial conditions. Our legislators seem not to lack in quickness of perception when it comes to adopting new ideas, punitive in character, at the same time side-stepping consideration of the lessons which should be learned from the methods adopted by leading European nations in dealing with the same problems which confront the American people. Cramped environment and selfish interests have led to failure on the part of legislators to understand that the industrial question is two-sided. To denounce Bolshevism, Syndicalism, or by whatever name such conditions may be called, demanding drastic punishment of all implicated, is one-sided justice. In attacking physical disease, medical men now seek to correct the system by removing the poison producing germs. Why should not legislation keep pace with the advance of medical science?

While the Old World has been busy with the problem of finding a common ground on which capital and labor may meet for mutual benefit, a constructive policy of relation, the New World has busied itself with finding ways and means of promoting antagonism between these two great economical forces. While the big business interests of Europe are inviting labor to come in and sit at the council table, the big interests of America have kept labor waiting in the anteroom, often with supercilious disregard. Representatives of the people go to sessions of the legislature, more or less influenced by this spirit of antagonism. More than likely, the reason for certain men being sent to the legislature, is to help make laws calculated to widen the breach between employer and employe; and we have such legislation as this latest act of the California legislature.

Such terms as "Bolshevism," criminal Syndicalism," and the like, are coming to be in common use as terms of opprobrium directed at certain classes of people. The pulpit, halls of the legislature, and the schoolrooms are condemning, and passing judgment without trial by jury or the benefit of clergy. Why cannot these good people understand that no effect is possible without its cause. What is Bolshevism, and what is criminal Syndicalism, as these terms are generally used? Mere words expressing opinion of one class toward another. No matter, perhaps, whether these terms are rightly used or not, sociologists look upon these conditions as diseases of society to be corrected. They do not condemn the patient, but rather, like the medical practitioner, seek to correct conditions by removing the cause. Blood-letting was the practice of medical men at one time as a cure for certain diseases. The practice

has long since been abandoned. Legal science still recognizes the hangman's knot as a cure for social disease.

We balk at the teachings of socialism, that which is doctrinal, while we encourage the spread of social democracy in our political system. With the tremendous force of the public school system increasing the needs of the masses of people, because opening their eyes to a higher plane of living, what is more natural than that dissatisfaction should be the result of failure to attain a better level of living? The evils of inequality of wealth come home more forcibly to that large class of society with quickened consciousness of justice, and appreciation of life's purposes, than would be the case with those of a lower stratum. It is not those lowest down in the scale who make the trouble aimed at by such legislation as above referred to. Their leaders belong to the class that has had better advantages in the public schools, and who have learned to do their own thinking. These have keener understanding of the inequality of living conditions, and they naturally resent what they regard as injustice in legislation that seems directed always towards cramping their efforts at betterment. I confess to inability to understand the justice of things, or the wishes of government control in any state where it is possible for one citizen to become so enormously wealthy that he cannot count his wealth, while his neighbor, as good a citizen, is scarcely able to provide his family with the necessities of life. This is not an extreme case, as we may learn if we care to look about us. Yes, both are within their legal rights, it may be assumed. The smug assurance of being within our legal rights is very comforting to the one, if not to the other. The legislator who votes to punish infractions of the laws of society keeps within his legal rights. He cannot be held legally responsible for failing to take into account those rights belonging to humanity long before organized society became subject to the rule of law as prescribed by legislatures. Justice is higher than abstract principle; the welfare of the people governed demands that all legislation conform to that principle.

Lawyers are so intimately connected with all legislation that that body of citizens must be held responsible for the character of our laws. They cannot hide behind the covert insinuation in the biblical question, "Am I my brother's keeper?" A burden of responsibility rests upon the legal profession to direct public opinion into proper channels, and to shape legislation, without fear or favor, so as to accomplish the purpose of the government, the great principle of democracy, the welfare of the people. The sneering attempt to shift responsibility, so often heard in the use of the above quotation, will no longer deceive the world. You are your brother's keeper in the sense of doing him justice, aiding and sustaining him in the enjoyment of his rights.

Out of the snarl and upheaval of the World's War a new code of ethics has been born. The exigencies of the titanic struggle of democracy against autocracy made plain the necessity that all stable government should rest on the consent of the governed, and that legislation should be directed towards removing differences between the great interests of capital and labor. At several stages of the late war, the showing of a little less of the true American spirit by either of these interests, and the result might have been disastrous to the cause of democracy. I say then, the lessons learned at this time should govern the course pursued by law makers in dealing with these questions. Let us have laws calculated to correct the conditions, which later may become so serious as to necessitate laws to punish disorders growing out of the conditions.

Just how serious this problem appears to political leaders may be seen in the movement of the administration at Washington to call together a commission of represen-

tatives from both great interests for the purpose of harmonizing differences and bringing into closer relation capital and labor, so that the inequalities complained of may be reduced, and all industrial relations and economical conditions be bettered.

Frederic Harrison, in the *Fortnightly Review* for January, 1918, writes as follows of present social conditions:

"The war of Nations is being entangled with, is merging into, the war of Class; about sovereignty, ranks upper and lower Orders; but essentially, between those who hold capital and those who work with their hands. National wars, as we see, unite men in nations; class wars suppress the spirit of nationality, for they herald what socialists promise as the grander form of patriotism, the brotherhood of laborers. At the opening of the great European war Democracy was appealed to, and nobly it answered the call in the name of the nation. But now, in this fourth year of the war, we see all over Europe how democratic patriotism is expanding into the new industrial order which dreamers for two generations have imagined as the Social Revolution."

The specific objects for which the United States entered this war bear a close relation to these European conditions which are now thoroughly transplanted into the political soil of our country. The growth of new doctrines is bound to upset our most fundamental conceptions, touching the real nature of democracy under its national powers. Our legislators will need to deal more with causes and less with effects, if they are to meet the requirements in representative government, with residuary sovereignty in the people. The press does not control public opinion as it once did, other educating influences have displaced it; besides its servile attitude towards big interests has weakened the confidence of the masses of people in its honest intentions.

PERCY L. EDWARDS.

South Pasadena, Cal.

CORPORATIONS—ULTRA VIRES.

DOUGLASS et al. v. STATE BANK OF ORLANDO.

Supreme Court of Florida. June 9, 1919.
Rehearing Denied July 12, 1919.

82 So. 593.

(Syllabus by the Court.)

Where the stockholders take no steps to prevent a corporation contracting debts in excess of the charter limit, and such limit is in fact exceeded and the benefits of the transaction have accrued to the corporation, the obligation is binding both on the corporation and subsequent creditors with notice.

REAVES, Circuit Judge. Two primary questions are presented by the record: First, had the corporation the power, as against subsequent judgment creditors, to mortgage its land for a sum greater than the amount of its authorized indebtedness as stated in the charter; and, second, is the mortgage in question shown by the evidence to be the mortgage of the Phillips Manufacturing Company?

The statute nowhere provides to what extent a manufacturing corporation may incur debt, but section 2648 requires "the highest amount of indebtedness or liability to which the corporation can at any time subject itself" to be stated in the articles of incorporation. No penalty is provided in case the corporation shall incur debt to exceed the stated limit, nor is such debt declared to be void, illegal, or not enforceable. In fact the statute is wholly silent as to what result shall follow such conduct, and the charter of this corporation is equally silent.

Counsel for appellants ably argues that the statute intended it to be "impossible" for a corporation to incur debt to exceed its charter limit, basing his contention chiefly upon the use of the word "can" in the above-quoted portion of section 2648, together with the fact that no penalty is imposed for exceeding the debt limit. We are not warranted in prolonging this opinion to dilate upon the word "can" by discussing its possible shades of meaning. As employed in this statute, however, it certainly implies a restriction or limitation beyond which a corporation may not go when such restriction is timely and properly invoked; but by and against whom, and under what circumstances, may the restriction be invoked? And this leads us to inquire for whose benefit the limitation is imposed. It can hardly be for the benefit of the state pri-

marily—although no doubt the state may take advantage of it in a proceeding to forfeit the charter—because the law allows the stockholders to fix the debt limit without restriction or right of modification in any public authority. It can hardly be for the benefit of those with whom the corporation may deal, because they have no way of keeping up with its transactions nor of knowing the extent of its debts. It must be primarily for the benefit of the stockholders. They fix the limit; they have the legal right to know and the means of finding out what the corporation is doing. If it proposes to exceed the debt limit they have fixed, any stockholder may object and prevent such abuse. "A charter constitutes a contract between the corporation and its stockholders," and they may object to any ultra vires act. Cook on Corporations (7th Ed.) § 669. Should the limit be exceeded, doubtless the obligation may be canceled if the parties can be put in statu quo, and the officers are personally liable to the stockholders for "borrowing in excess of the company's power." Cook on Corporations (7th Ed.) § 682. In fact to protect stockholders against the acts of reckless or dishonest officials of the corporation is the one practical purpose the limitation can serve, and such is doubtless the primary object of the law in requiring a limit to be stated in the charter. Beach v. Wakefield, 107 Iowa, 567, 76 N. W. 688, 78 N. W. 197.

Where the stockholders have taken no steps to prevent the corporation exceeding its debt limit, and the limit has been in fact exceeded and the benefits of the transaction have accrued to the corporation, the American authorities quite generally hold that the obligation may be enforced both against the corporation and subsequent creditors.

"Although a statute forbids a corporation from borrowing more than a specified amount, yet if the corporation actually does borrow in excess of that amount, it cannot escape payment to the lender."

"Bonds secured by mortgage and issued by a corporation are valid and enforceable, although they exceed in amount the limit prescribed by charter or statute." Cook on Corporations (7th Ed.) §760, and authorities cited in notes on pages 2810-2813.

A mortgage securing a debt in excess of the statutory amount is "binding on the corporation as well as its subsequent creditors." Jones on Mortgages (7th Ed.) § 126a, and cases cited in note 47.

It is unnecessary to state here at length the reasoning by which the courts have reached the conclusion stated. The cases are collated in the text-books above cited, and may be obtained by reference thereto. Some of them are: Union National Bank v. Matthews, 98 U. S. 621, 25 L. Ed. 188; Sioux City Terminal Railroad & Warehouse Co. v. Trust Co. of North America, 173 U. S. 99, 19 Sup. Ct. 341, 43 L. Ed. 628; Wood v. Corry Waterworks Co. (C. C.), 44 Fed. 146, 12 L. R. A. 168; Central Trust Co. of New York v. Columbus, H. V. & T. Ry. Co. (C. C.), 87 Fed. 815; International Trust Co. v. Davis & Farnum Mfg. Co., 70 N. H. 118, 46 Atl. 1054; Hawke v. California Realty & Const. Co., 28 Cal. App. 377, 152 Pac. 959; Sioux City Terminal Railroad & Warehouse Co. v. Trust Co. of North America, 82 Fed. 124, 27 C. C. A. 73; Allis v. Jones (C. C.), 45 Fed. 148. Also see 19 Cyc. 1171.

Some courts hold that, inasmuch as the statute does not declare such excess indebtedness void or not enforceable, the courts should not do so; others that after the corporation has received the benefit of the transaction, it cannot be heard to repudiate the obligation; and still others that it lies with the state to move against the corporation to forfeit its charter, and not with individuals to question the validity of its transactions.

This court also has settled the general principles controlling this case quite in line with the authorities above quoted and cited. Southern Life Ins. & Trust Co. v. Lanier, 5 Fla. 110, 58 Am. Dec. 448; Allen v. Freeman's S. & T. Co., 14 Fla. 418, and see especially the first page of the opinion, 428; McQuaig v. Gulf Naval Stores Co., 56 Fla. 505, 47 South. 2, 131 Am. St. Rep. 160.

In fact we have found no authority holding that a corporation under such circumstances can avoid legal liability for the money it has received and used, but a few cases say the creditor must disavow the contract by suing on the common counts, and such is the argument of appellant in this case. But it seems rather technical to say that while the money secured by the mortgage may be recovered, the mortgage as security therefor may not be enforced. The Iowa court has aptly said:

"It is the debt which is prohibited, and not the mortgage. So long as the debt in any form can be enforced, the mortgage should stand." Beach v. Wakefield, supra.

If the corporation is bound by the mortgage, it would seem that its judgment creditors whose judgments were obtained after the mortgage was recorded should be equally bound, and the authorities generally so hold. Fidelity Insurance, Trust & Safe Deposit Co. v. Western Pennsylvania & S. C. R. R. Co., 138 Pa. 494,

21 Atl. 21, 21 Am. St. Rep. 911; Beach v. Wakefield, supra; Jones on Mortgages (7th Ed.), § 126a.

In fact any other holding would be inconsistent with the purpose and effect of the recording statutes. Tyler v. Johnson, 61 Fla. 730, 55 South. 870; Rogers v. Munnerlyn, 36 Fla. 591, 18 South. 669.

We have not failed to carefully consider the case of Bell & Coggeshall Co. v. Kentucky Glass-Works Co., 106 Ky. 7, 50 S. W. 2, 1092, 51 S. W. 180, on which appellants mainly rely, but we are unable to agree that the rule there announced should apply in Florida.

"Under the statute the proper record of a mortgage affords constructive notice of its contents" (Tyler v. Johnson, supra), and if, as the Kentucky court holds, "Persons dealing with a corporation are charged with notice of the limit of the indebtedness prescribed by its articles," then if a mortgage securing an amount in excess of such limit has been duly recorded, they must be held to know that such limit had theretofore been exceeded, and they cannot, under such circumstances, be heard to impeach the lien of such prior mortgage.

The impracticability of the doctrine championed by the Kentucky court that a debt created by a corporation in excess of the charter limit is void for the excess is strikingly illustrated by the limitation imposed by the same court that one lending money to a corporation to an amount within the charter limit, without knowledge of other loans, the aggregate of which exceed the charter limit, is not affected by the limitation. Citizens' Bank v. Bank of Waddy, 126 Ky. 169, 103 S. W. 249, 11 L. R. A. (N. S.) 598, 128 Am. St. Rep. 282.

If the corporation cannot incur debt to exceed the charter limit, that is, if it has not the capacity, the ability or competency, then what difference can it make whether the indebtedness is in one sum or in numerous small items? And how can it be material whether the creditor knew or did not know? General creditors do not, and cannot in practical business dealings, know the aggregate of a corporation's indebtedness. The doctrine seems to have its foundation in the knowledge of the creditor, not in the want of power in the corporation. Even in this view, the judgment creditors in the case at bar could hardly prevail over the mortgagee, because, as we have pointed out, they must be charged with constructive notice of the mortgage. Whether they had actual notice we are not advised. Although the answer disclaims knowledge, no evidence was offered on that point. In either case they cannot complain.

The decree should be affirmed.

NOTE—*Bank Borrowing Money in Excess of Charter Limits.*—Nothwithstanding, as is stated by the instant case that it was ruled in Bell & Coggeshall Co. v. Kentucky Glass Works Co., 106 Ky. 7, 50 S. W. 2, 1092, 51 S. W. 180, that a debt in excess of charter powers of a corporation is void for the excess as to subsequent creditors, though it be valid as to the corporaton and its stockholders, yet that court afterwards held a bank could pledge notes of the bank for its repayment, Citizens Bank v. Weakley Receiver, etc., 126 Ky. 169, 103 S. W. 29, 11 L. R. A. (N. S.) 598, 128 Am. St. Rep. 282. Now applying the doctrine of its former decision, this gives very large control over the assets of a bank in thus allowing it to prejudice the rights of subsequent creditors.

Notably, however, of the decision in the former case, it cites only cases disagreeing with its conclusion, the court saying: "We are well aware, however, that there is quite a respectable number of cases, in which it has not only been held that the excessive indebtedness is enforceable against the mortgagor (a bank), but that subsequent creditors stand in no better light than the mortgagor himself." The court would appear to owe it to itself to have cited at least one authority on its own side.

The nearest approach to any support we have been able to find in any case for the view of the Kentucky court in the case in 106 Ky. *supra*, is in Kraniger v. People's Bldg. Soc., 60 Minn. 94, 61 N. W. 904. In that case an indebtedness was credited by a loan to a corporation, and the amount having been embezzled it was ruled that the corporation had received no benefit and was not bound. In that case the corporation's secretary received the money but never turned it over. It was said: "The secretary was the agent of the society only to receive money authorized to be borrowed by the articles of association." But here he had the apparent power to receive the money.

There is a very different question presented when the limit for the creation of indebtedness is prescribed as to a municipal corporaton. There the excess is void, Daviess County v. Dickinson, 117 U. S. 657; McPherson v. Foster, 43 Iowa 48, 22 Am. Rep. 215.

In Natl. Life Ins. Co. v. Mead, 13 S. Dak. 37, 82 N. W. 78, 79 Am. St. Rep. 876, a purchaser of negotiable municipal bonds must be deemed to know all constitutional and statutory restrictions, including the valuation of the property of a municipality as ascertained by its assessment.

In State ex rel Waterworks Co. v. Helena, 24 Mont. 521, 63 Pac. 99, 81 Am. St. Rep. 453, it is said a private contractor with a city is bound to take notice of a city's financial condition, and must determine for himself whether a proposed indebtedness is in excess of a constitutional limitation. In this kind of a corporation there is no presumption of authority in the holding out of an officer as in a private corporation, and nothing is taken by way of intendment as against the rights of the public, and no principle of ultra vires is ignored because of benefits received.

C.

CORRESPONDENCE.

AN ILLUSTRATION OF SLOVENLY LEGISLATION.

Editor, Central Law Journal:

At its 1919 session the California legislature added a new section to the Civil Code reading as follows:

"Section 1300a. If, after making a will, the testatrix marries, and has issue of said marriage, *born either in her lifetime or* AFTER HER DEATH, and the husband or issue survives her, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issues are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no *other* evidence to rebut the *presumption* of such revocation can be received."

Emphasis is supplied. It may be possible for a surgeon by quick action to remove from the body of a dead woman a living child, but would such mechanical removal be "birth?" If the woman be dead her power of propulsion is gone and she cannot give birth to the child.

The survival of the husband or child automatically revokes the will. What "presumption" is there to overcome? If the child is born after the mother's death it certainly survives her.

This bill, like all others, must have been introduced by a member supposedly competent to frame a bill; it must have passed through the hands of two committees; it was approved by the governor.

The legislation of 1919 is contained in a volume of 1557 pp. exclusive of index.

The legislation of 1917 is contained in a volume of 1978 pp. exclusive of index.

Will the craze for legislation ever cease?

Yours truly,

GEO. E. MCCAUGHAN.

Long Beach, Cal.

BOOKS RECEIVED.

Corporate Organization and Management. By Thomas Conyngton, of the New York Bar. Revised by H. Potter, of the New York Bar. Fourth Edition. New York. The Ronald Press Company. 1919. Price, $5.00. Review will follow.

HUMOR OF THE LAW.

Judge. I understand that you prefer charges against this man?

Baker. No, sir. I prefer cash, and that's what I had him brought here for.—*Pearson's Weekly.*

"A woman asked me today," remarked a lawyer, "if she could get a divorce because her husband is a cigarette fiend."

"What did you tell her?"

"I told her she might, and then she inquired how many coupons it would take."—*Boston Transcript.*

A woman from Florida approached President Wilson one day and, after greeting her, the President asked what he could do for her.

"Oh, nothing at all," replied the woman. "I came from Florida just to see what a live President looked like. I never saw one."

"That's very kind of you," replied the President, laughing heartily. "There's no reason why you shouldn't, since many of us in the North here go all the way to Florida just to see a live alligator."—Ladies' Home Journal.

The man who lost the freak election bet was fully conscious of his facial deficiencies.

"There's only one thing I ask," said he to the winner.

"What's that?" inquired the winner.

"If you're going to stand by and see that I eat all these peas with a hatpin, I want you to admit that you won the bet and are insisting on its payment. Don't you pretend that you are my keeper!"

"Yes, your Honor, I done warned dat der nigger."

"You warned him, you say. How?"

"Nigger," I says, "don't mess wid me, 'kase, when yo' do, yo' shuah is flirtin' wid de hearse."

"Yes, and what did the other nigger say?"

"He jes plum' tells me—'don't pesticate me, don't fo'ce me to press dis upon yo', 'kase if I does, I'll hit yo' so ha'd I'll sep-rate yo' from amazin' grace to a floatin' opportunity."

"Well, and what did you say then?"

"Ah jes natcherally remarks, if yo' mess wid me, nigger, I'll jes make one pass, an' dere'll be a man pattin' yo' in the face wid a spade tomorrow mo'nin. Dat's all ah sed, your Honor."—Lawyer and Banker.

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Assignments**—Torts.—Right of action for injury to property is assignable.—Evans v. Watkins, S. C., 100 S. E. 153.

2. **Bankruptcy**—Expenditures.—The rule that a general assignee will be allowed from the estate in bankruptcy for such expenses as were reasonably incurred in the care and preservation of the property will be strictly applied as to expenditures made after the bankruptcy.—In re Morris & Rice, U. S. D. C., 258 Fed. 712.

3.——Possession by Trustee.—Surrender to a trustee of property in possession of third persons claiming ownership thereof cannot be enforced by a summary proceeding in the bankruptcy court, over objection of the claimants.—Eisenberg v. Weisskopf, U. S. C. C. A., 258 Fed. 617.

4.——Provable Debts. — A fine adjudged against a corporation on its conviction for using the mail to promote frauds, under Criminal Code, § 215 (Comp. St., § 10385), is a "penalty," within the meaning of Bankruptcy Act, July 1, 1898, § 57j (Comp. St., § 9641), not provable in bankruptcy.—United States v. Birmingham Trust & Savings Co., U. S. C. C. A., 258 Fed. 562.

5.——Receiver.—A receiver in bankruptcy has the right to take property sold to the bankrupt and shipped by carrier from the carrier on its arrival at destination, and such taking ends the right of stoppage in transitu.—In re Arctic Stores, U. S. D. C., 258 Fed. 688.

6.——Removal of Trustee.—That the trustee of a bankrupt, appointed by a large majority of creditors, had previously acted for the bankrupt and his wife, who conveyed to him all of their property in trust for themselves and creditors, held not ground for his removal, where he executed the trust efficiently and in good faith, and made payments only by direction or with the approval of bankrupt.—In re Holden, U. S. D. C., 258 Fed. 720.

7.——Void Mortgage.—A creditor of a bankrupt, holding a void mortgage on property, but which during more than a year, and while debts to other creditors were accruing, took no steps to reform its mortgage or assert a lien, held not entitled to a lien as against general creditors.—Rader v. Star Mill & Elevator Co., U. S. C. C. A., 258 Fed. 599.

8. **Banks and Banking**—Administration of Trust.—The primary and ordinary conception of a trust company is a corporation to take and administer trusts.—People v. National Security Co., N. Y., 177 N. Y. Sup. 838.

9. **Boundaries**—Middle of Street.—Where land is conveyed bounded by an opened street, the grantee takes title to the middle of the street, if the grantor had title to it, and did not expressly or by clear implication reserve it.—Hawkes v. City of Philadelphia, Pa., 107 Atl. 747.

10. **Bridges**—Public Expense.—The legislature has the power to have bridge between two counties constructed entirely at the cost of the whole state, though no part of the bridge and its approaches will be upon the soil of the other counties contributing to its erection, the construction and maintenance of bridge being a matter of public concern of benefit to people of the entire state.—Martin County v. Wachovia Bank & Trust Co., N. C., 100 S. E. 134.

11. **Collision** — Apportioning Damages. — Where the personal negligence of the owner of a motorboat contributed to collision with a tug and her tow, he can recover against the tug only half his damages.—The O'Brien Brothers, U. S. C. C. A., 258 Fed. 614.

12.——Contributory Cause.—The fact that the barges were tied up at the end of a pier in violation of the statute held not a contributory cause of a collision between them and a barge being towed from an adjoining slip, where there was ample room for the tow to pass safely if properly navigated.—The Daniel McAllister, U. S. C. C. A., 258 Fed. 549.

13.——Towing Privilege.—A tug does not acquire anything in the nature of privilege against other vessels by taking on an unnecessarily long tow.—Commonwealth & Dominion Line v. Seaboard Transp. Co., U. S. D. C., 258 Fed. 707.

14. **Constitutional Law**—Contempt.—An attachment and imprisonment for contempt for disobedience of a court's order to pay over money is not imprisonment for debt.—Rudd v. Rudd, Ky., 214 S. W. 791.

15.——Due Process of Law.—Personal service notice in the assessment and levy of taxes is not essential to due process of law.—State v. Security Nat. Bank, Minn., 173 N. W. 885.

16.——Police Power.—As the Tenement House Law is an exercise of the police power, apt and appropriate for its suggested purpose, no question concerning the infringement of property rights or the wisdom of the legislative adoption of method can be considered in an action for its violation.—People v. Krinka, N. Y., 177 N. Y. Sup. 846.

17.——Taxation.—The presumption that a law is constitutional applies with unusual force to laws enacted under the taxing power.—Scott v. Frazier, U. S. D. C., 258 Fed. 669.

18. **Contempt**—Intent.—The question whether an act is or is not a contempt does not depend upon whether there was an actual intent to embarrass the due administration of justice, but may be determined from the nature of the act and by the presence or absence of any sound reason for it.—Levinstein v. E. I. Du Pont de Nemours & Co., U. S. D. C., 258 Fed. 662.

19. **Contracts**—Capacity to Contract.—The law of the state where a contract is executed applies in determining the capacity of the parties to contract.—Carmen v. Fox Film Corporation, U. S. D. C., 258 Fed. 703.

20.——Implication.—From an expressed undertaking, the law will also imply whatever the parties reasonably may be supposed to have meant, and whatever is essential to render the transaction fair and honest.—Mull v. Touchberry, S. C., 100 S. E. 152.

21.——Misrepresentation.—To make out a right to avoid an agreement by reason of a misrepresentation, it is necessary that plaintiff prove that he relied upon such misrepresentation in making the agreement.—Ross v. Burrage, Mass., 124 N. E. 267.

22.——Mutual Intention. — Where circumstances are shown which, according to the ordinary course of business, show a mutual intention to contract, the law will not simply imply a contract, but will derive the terms of a contract so far as practicable from the conditions shown.—Reitmeyer v. Coxe Bros. & Co., Pa., 107 Atl. 739.

23. **Corporations**—Estoppel.—A subscriber to the stock of a corporation cannot defend an action on his subscription notes by alleging fraud and misrepresentation in procuring the subscription, where after his discovery of the fraud he retained the certificate of stock and received and retained several dividends.—Corporation Funding & Finance Co. v. Stoffregen, Pa., 107 Atl. 727.

24.——Reversion of Stock.—Where plaintiff had agreed to purchase railroad bonds from railroad contractor, who had agreed to deliver railroad stock to plaintiff as it should take up and pay for bonds bought of contractor, the stock to be evidenced by voting trust certificates held by plaintiff, the stock reverted to plaintiff, if for any reason the trust agreement failed.—Duquesne Bond Corporation v. American Surety Co. of New York, Pa., 107 Atl. 759.

25.——Separate Entity.—A Pennsylvania corporation continued as a separate entity, notwithstanding its stock was all held by another corporation.—S. G. V. Co. of Delaware v. S. G. V. Co. of Pennsylvania, Pa., 107 Atl. 721.

26.——Separate Entity.—A corporation has a separate entity or existence irrespective of the persons who own its stock, which rule is not altered by the fact that the greater portion or even the entire issue of stock is held by one person.—Macan v. Scandinavia Belting Co., Pa., 107 Atl. 750.

27. **Creditors' Suit.**—Lien of Attachment.—A creditor, having attached on mesne process, in an action at law on which judgment was duly rendered, all of the right, title, and interest of heirs in decedent's realty, and having within 30 days brought bill in equity to enforce his rights, the lien of the attachment on the share of the proceeds belonging to one heir, the debtor, more than enough to satisfy the judgment, though changed in form by sale by the administrator to pay debts, never had been dissolved and can be enforced in equity under Rev. Laws, c. 167, § 38.—Bartlett v. Moore, Mass., 124 N. E. 275.

28. **Criminal Law**—Confession. — A "confession," in a legal sense, is restricted to an acknowledgment of guilt made by a person after an offense has been committed, and does not apply to a mere statement or declaration of an independent fact from which such guilt may be inferred.—Wilson v. State, Okla., 183 Pac. 613.

29.——Hereditary Insanity. — Hereditary insanity of itself cannot be used as a defense.—Commonwealth v. Dale, Pa., 107 Atl. 743.

30. Res Gestae.—Where two or more persons were associated for the same illegal purpose, any declaration or act of one of the persons in reference to the common object is admissible, when they are in furtherance of the common object or constitute a part of the res gestae.—Fitter v. United States, U. S. C. C. A., 258 Fed. 567.

31.——Separation of Jury.—Where juror who had separated from remainder of jury was not in sight of officer in charge at time of separation, jury should be discharged.—Schackelford v. Commonwealth, Ky., 214 S. W. 788.

32.——Specific Exceptions. — Exception to charge in criminal case must be specific, and not general.—Gilson v. United States, U. S. C. C. A., 258 Fed. 588.

33. **Customs and Usages**—Evidence.—Where seller, in assumpsit for high speed steel, was allowed to produce evidence of alleged custom in the trade, contradicting provisions of Sales Act, that only right of a buyer discovering defects was to return it and receive credit for contract price, the buyer was entitled to ask an experienced witness whether he had ever heard of such a custom.—Griffin v. Metal Product Co., Pa., 107 Atl. 713.

34. **Damages**—Mitigation of.—To get another cargo as good as can be obtained and as quickly as is reasonably possible is the extreme measure of a ship owner's obligation to mitigate damages on notice by the charterer that he will not load.—Steger v. Orth, U. S. C. C. A., 258 Fed. 619.

35. **Death**—Seven Years' Absence.—Although the time of death of one who cannot be found is presumed to be seven years from date on which he was last heard from, the presumption may be overcome by facts and circumstances showing that his death probably happened sooner, or that he encountered a special peril which might reasonably be expected to be fatal.—Fanning v. Equitable Life Assur. Soc. of the United States, Pa., 107 Atl. 715.

36. **Deeds**—Presumption of Sanity.—The presumption of law is in favor of the sanity of a grantor, and the person attacking his conveyance for incapacity has the burden of proof.—Carrigan v. Davis, W. Va., 100 S. E. 91.

37. **Divorce**—Corroboration of Witness.—Corroboration, in action for divorce for cruelty, may be sufficient, though weak; the nature of the cruelty being of a character making corroboration difficult.—Brautigam v. Brautigam, Cal., 183 Pac. 529.

38.——Desertion.—Where the separation of husband and wife was mutually agreed upon, neither can invoke the desertion statute in an action for divorce until some attempt had been made to renew the marital relation which must have been refused.—Fagan v. Fagan, Iowa, 173 N. W. 875.

39. **Eminent Domain**—Time of Taking. — When value of land condemned is ascertained it relates back to time of taking, and owner is entitled to compensation for delay in its payment, unless some just cause to the contrary is shown, and such compensation is measured by an interest rate recoverable as damages, which rate will be normal commercial rate during period of detention and which, if no evidence is given thereof, will be presumed to be legal rate.—Whitcomb v. City of Philadelphia, Pa., 107 Atl. 765.

40. **Equity**—Cancellation.—On a bill for cancellation of a deed, the objection that plaintiff had no interest in the land covered by the deed, although not raised by demurrer or answer, should have prevailed, where made in court below before final decree, as it is never too late to raise the question of jurisdiction in equity for want of necessary parties.—Craig v. Craig, Pa., 107 Atl. 719.

41. **Escrows**—Stranger.—An "escrow" is a deed delivered to a stranger, to be by him delivered to grantee on happening of certain conditions, on which last delivery the transmission of title is complete, and the delivery to the grantee named in the deed cannot be in escrow. —Weisenberger v. Huebner, Pa., 107 Atl. 763.

42. **Estates**—Judicial Notice.—Judicial notice may be taken regarding the period of gestation, and the court may inform itself from technical publications, etc.—In re McNamara's Estate, Cal., 183 Pac. 552.

43. **Executors and Administrators**—Removal. —It must clearly appear that the executor is wasting or mismanaging the estate, or that for any reason its interests are likely to be jeopardized by his continuance in office to warrant his removal under Act May 1, 1861 (P. L. 680), on those grounds.—In re Kaier's Estate, Pa., 107 Atl. 724.

44. **Fixtures**—Intention.—Whether fig cuttings, planted on land of another under an agreement, became annexed to the real estate, so as to pass with it depends on the parties' intention.—Kirkman Nurseries v. Sargent, Cal., 183 Pac. 591.

45. **Frauds, Statute of**—Agreement of Marriage.—Under Rev. Laws, c. 74, § 1, cl. 3, an agreement in consideration of marriage is unenforceable, unless in writing.—Barlow v. Barlow, Mass., 124 N. E. 285.

46.——Removal of Timber.—An executory contract to cut and remove timber is not enforceable unless in writing.—Davis v. Harris, N. C., 100 S. E. 111.

47. **Game**—Migratory Birds.—The treaty of August 16, 1916, with Great Britain for the protection of migratory birds (39 Stat. 1702), being within power of United States to make, Act July 3, 1918 (Comp. St. 1918, § 8837a, appendix), enacted to give effect to that treaty, is also within its power.—United States v. Selkirk, U. S. D. C., 258 Fed. 775.

48. **Gaming**—Futures.—To show that it was the buyer's intention, at time of contract to sell and deliver cotton seed in the future, to actually receive it, his testimony in terms to that effect, which would not be conclusive, is not necessary; but such intention is to be determined from the whole event.—Medlin v. Hodges, S. C., 100 S. E. 154.

49. **Gifts**—Deposit.—That there was found among decedent's personal effects a bankbook showing a deposit of $2,500 and a paper on which was written in German, "Money and all that I have give you to, certain persons, held not to show a gift of the bank deposit inter vivos or causa mortis by decedent to such persons.—Green v. Hynes, Cal., 183 Pac. 568.

50. **Homicide**—Heat of Passion.—One who struck fatal blow with deadly weapon, not in self-defense, but in sudden heat and passion, aroused by sufficient provocation, was guilty of manslaughter.—State v. Simmons, S. C., 100 S. E. 149.

51.——Self-Defense.—To maintain the plea of self-defense, it must be made to appear that accused was free from a fault in bringing on the difficulty, had reasonable ground to believe that he was in imminent danger of death or great bodily harm at hands of deceased, and that there was a necessity to kill to save himself therefrom.—Waldon v. State, Okla., 183 Pac. 637.

52. **Husband and Wife** — Curtesy. — Huband has no interest in wife's land beyond a contingent right of curtesy, if she makes no will.—Lancaster v. Lancaster, N. C., 100 S. E. 120.

53.——Head of Family.—The fact that a husband does not support his wife does not deprive him of his legal rights as the head of the family. —Appeal of Brookland Bank, S. C., 100 S. E. 156.

54. **Interest**—Partial Payments.—The rule of the federal courts in case of partial payments is that interest shall be calculated whenever payment is made, and the payment first applied to such interest, the balance, if any, to be applied on the principal; if the payment fall short of the interest due the balance of interest is not to be added to the principal so as to produce interest.—Harlan v. Houston, U. S. C. C. A., 258 Fed. 611.

55. **Landlord and Tenant** — Discharge of Lessee.—The original lessee of store premises was not discharged from his obligations under the lease by an arrangement between the lessees of the entire building from a purchaser subject to the lease from the executors, who were the original lessors of the store premises, and such other parties to the transaction.—Reidy v. Kennedy, Mass., 124 N. E. 289.

56.——Repair of Premises.—Under a tenancy at will arising from the ordinary oral contract, there is no implied agreement, apart from fraud, that the demised premises are and will continue to be fit for occupancy, or safe and in good repair. The tenant taking the premises as he finds them, and there being no obligation to repair, the landlord is not liable for injuries from a defective condition, unless he has undertaken to repair and has done so negligently.—Fiorntino v. Mason, Mass., 124 N. E. 283.

57. **Larceny**—Interstate Transportation. — In a prosecution for violating Act Feb. 13, 1913 (Comp. St., §§ 8603, 8604), making it a crime to

steal, or unlawfully take, carry away, or conceal, etc., any goods or chattels moving as part of an interstate or foreign shipment, etc., the statute will be construed to apply to the case of a shipment from one point in the state to another point, where the route is in part without the state.—United States v. Moynihan, U. S. C. C. A., 258 Fed. 529.

58. **Licenses**—Tax. — The imposition of a license tax upon an occupation is not illegal, because not expressly authorized by the state constitution, but is permissible, unless prohibited thereby.—Ex parte Dixon, Nev., 183 Pac. 642.

59. **Maritime Liens**—Consequential Damages. —Where a fireman on a pile driver used by his employer in construction of a pier in a harbor threw ashes into waters visibly covered by oil, causing a fire which destroyed barges and their cargoes, the company for which the pier was constructed on a cost basis, and which was aware that ashes were thrown overboard, was liable for the consequences, though the employer doing the work was an independent contractor. —United States v. Standard Oil Co. of New Jersey, U. S. D. C., 258 Fed. 697.

60. **Marriage**—Impotency. — Impotency does not render a marriage void, but only voidable at the suit of the party conceiving herself or himself to be wronged.—Martin v. Otis, Mass., 124 N. E. 294.

61. **Master and Servant**—Burden of Proof.— An employe, suing for injury to her eyes from fall of grit or dust from ceiling, must prove, not only the accident, but some specific act of negligence from which it resulted.—Ellett v. Lit Bros., Pa., 107 Atl. 718.

62.——Contributory Negligence.—Relative to contributory negligence of foreman, killed by falling timber in the taking down of railroad snowsheds, the presumption is that he had a justifiable reason for changing his position, as the timber descended in an irregular manner.— Ward v. Southern Pac. Co., Cal., 183 Pac. 594.

63.——Safe Tools.—It is the master's continuous duty to furnish his employes with reasonably safe tools and appliances.—McGrath v. Atlantic Refining Co., Pa., 107 Atl. 741.

64.——Workmen's Compensation.—The Workmen's Compensation Act was not intended to confine hiring contracts to express contracts, to the exclusion of that class of contracts which arise by implication of law, where circumstances appear which according to the ordinary course of human dealings show a mutual intention to contract.—Reitmyer v. Coxe Bros. & Co., Pa., 107 Atl. 739.

65. **Mechanics' Lien**—Unliquidated Damages. —A mechanic's lien can be sustained only for work done or materials furnished, and not for unliquidated damages for breach of contract.— Dyer v. Wallace, Pa., 107 Atl. 754.

66. **Mortgages**—Estoppel. — A grantee of mortgaged premises, who joined with the mortgagor in securing a postponement of the foreclosure sale, held estopped to contest the binding effect of the foreclosure upon the ground that it was not formally made a party defendant. —Savannah Timber Co. v. Deer Island Lumber Co., U. S. D. C., 258 Fed. 777.

67.——Priority.—An agreement by a prior mortgagee that a subsequent mortgage, concededly a valid lien, should first be paid out of the proceeds of the mortgaged premises is legal. —In re Schwab, U. S. D. C., 258 Fed. 772.

68. **Navigable Waters**—Low Water Mark.— Below the ordinary low water mark of the Delaware River, the ownership of the soil is in the commonwealth.—Black v. American International Corporation, Pa., 107 Atl. 737.

69. **Negligence**—Causal Connection.—To constitute actionable negligence, the causal connection between the negligence and the injury must be by natural and unbroken sequence, without intervening causes. — Montgomery Light & Water Power Co. v. Charles, U. S. D. C., 258 Fed. 723.

70. **Patents**—Infringement.—An infringement is a tort, and anyone who aids in it is answerable.—Walter S. Newhall Co. v. Baltimore & O. R. Co., U. S. D. C., 258 Fed. 650.

71.——Infringement. — Infringements not being wantonly or willfully made, but made through a supposed right, compensation to patentee in an accounting suit should be limited to actual damages sustained.—T. L. Smith Co. v. Cement Tile Machinery Co., U. S. D. C., 258 Fed. 636.

72. **Payment**—Voluntary Payment.—One cannot recover money voluntarily paid with full knowledge of all the facts, although no obligation existed; but money may be recovered where paid under circumstances of fraud, misrepresentation, and threats amounting to duress, which prevents the free exercise of the will, or where it is paid on a wrongful demand to save the party paying from some great or irreparable mischief or damage from which he could not otherwise be saved.—Lipman, Wolfe & Co. v. Phoenix Assur. Co., U. S. C. C. A., 258 Fed. 544.

73. **Principal and Agent** — Revocation of Agency.—One's agency to deliver for the donor property to the donee is revoked by death of donor prior to delivery.—Green v. Hynes, Cal., 183 Pac. 568.

74. **Principal and Surety**—Duress.—A defense of duress is open only to the party upon whom it is imposed. A third party, who has become a surety for payment of a claim, cannot avail himself of the plea, unless he signed obligation without knowledge of the duress.—Walton v. American Surety Co. of New York, Pa., 107 Atl. 725.

75. **Remainders**—Statutes of Limitation.—In view of Code 1897, §§ 4223, 4307, Code 1873, §§ 3273, 3337, and Revision 1860, § 3601, the holder of a title or interest in remainder after a life estate, being vested with the right of action by which such title or interest may be conclusively adjudicated, comes within the rule of the general statutes of limitation.—Nevelier v. Foster, Iowa, 173 N. W. 879.

76. **Removal of Causes** — Removability. — Right of defendant in an action begun in state court to have the cause removed to the federal court, depends on some act of Congress.—Fairview Fluorspar & Lead Co. v. Bethlehem Steel Co., U. S. D. C., 258 Fed. 681.

77. **Sales**—Express Warranty.—Where, by the contract of sale of an automobile, the seller expressly warranted the car to be first-class in all respects, and fully worth the value paid, such express warranty or undertaking excluded any implied warranty of quality.—Mull v. Touchberry, S. C., 100 S. E. 152.

78.——F. O. B. Shipment.—Where steel purchased by defendant, a manufacturer of Pittsburgh, Pa., was to be delivered f. o. b. the shipping point in New York, the contract was a New York contract, to be interpreted according to the laws of that state.—Griffin v. Metal Product Co., Pa., 107 Atl. 713.

79.——Rescission.—Buyer had the right, without seller's consent, to ship goods back, if they did not come up to sample, but not otherwise. —Daniels & Cox v. Southern Distributing Co., N. C., 100 S. E. 112.

80. **Trusts**—Burden of Proof.—One claiming a trust created by deed to an attorney cannot enforce it, unless he avers and proves the trust. —Weisenberger v. Huebner, Pa., 107 Atl. 763.

81. **Vendor and Purchaser**—Assignment.—The benefits to be derived from a transaction may always be assigned, and they may likewise always be enforced by an undisclosed principal, where full consideration has been rendered by the agent.—Hay v. Hollingsworth, Cal., 183 Pac. 582.

82. **Wills**—Intent.—Testator's intention must be extracted from the express terms of his will. In re McKay's Estate, Cal., 183 Pac. 574.

83.——Residuary Estate.—Failing testamentary provisions to the contrary, debts, charges and all just obligations must be paid out of the residue of a decedent's estate; the benefaction conferred by the residuary clause of the will being only that which remains after all claims are satisfied.—Plunkett v. Old Colony Trust Co., Mass., 124 N. E. 265.